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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 EVELYN WIMBERLEY,

11 Plaintiff,

12 v.

13 Rite Aid Corporation et al.

14 Defendants,

Case No.

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT RITE AID, INC.**

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18 **1. INTRODUCTION**

19 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff
20 Evelyn Wimberley acting on behalf of the public interest (hereinafter “Wimberley”), and
21 Defendant Rite Aid Corporation (hereinafter “Rite Aid”), with Wimberley and Rite Aid
22 collectively referred to as the “Parties” and each of them as a “Party.” Wimberley is an
23 individual residing in California who seeks to promote awareness of exposures to toxic chemicals
24 and improve human health by reducing or eliminating hazardous substances contained in
25 consumer products. Rite Aid is a person in the course of doing business for purposes of
26 Proposition 65, Cal. Health & Safety Code §§ 25249.6 *et seq.*

27 1.2 **Allegations and Representations.** Wimberley alleges that Rite Aid has offered
28 for sale in the State of California and has sold in California, a Tripod Grill 18 inch that when used

1 as intended exposes individuals to carbon monoxide and soot, and that such sales have not been
2 accompanied by Proposition 65 warnings. Carbon monoxide and soot are listed under
3 Proposition 65 as chemicals known to the State of California to cause birth defects or other
4 reproductive harm.

5 **1.3 Notices of Violation/Complaint.** On or about May 22, 2017, Wimberley served
6 Rite Aid and various public enforcement agencies with a document entitled "60-Day Notice of
7 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Rite Aid
8 was in violation of Proposition 65 for failing to warn consumers and customers that the Tripod
9 Grill 18 inch exposed users in California to carbon monoxide and soot. No public enforcer
10 diligently prosecuted the claims threatened in the Notice within sixty days plus service time
11 relative to the provision of the Notice to them by Wimberley.

12 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
13 has jurisdiction over Rite Aid as to the allegations contained in the complaint filed in this matter,
14 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
15 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
16 of all claims which were or could have been raised in the Complaint based on the facts alleged
17 therein and/or in the Notices.

18 **1.5** Rite Aid denies the material allegations contained in Wimberley's Notice and
19 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
20 Judgment shall be construed as an admission by Rite Aid of any fact, finding, issue of law, or
21 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
22 an admission by Rite Aid of any fact, finding, conclusion, issue of law, or violation of law, such
23 being specifically denied by Rite Aid. However, this section shall not diminish or otherwise
24 effect the obligations, responsibilities, and duties of Rite Aid under this Consent Judgment.

25 **2. DEFINITIONS**

26 **2.1 Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

27 **2.2 Covered Product.** The term "Covered Product" means Tripod Grill 18 inch.
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1 **2.3 Effective Date.** The term “Effective Date” shall mean the date this Consent
2 Judgment is entered as a Judgment of the Court.

3 **2.4 Listed Chemicals:** The term “Listed Chemicals” shall mean carbon monoxide and
4 soot.

5 **2.5 Notice.** The term “Notice” shall have the meaning given in Section 1.3.

6 **2.6 Releasees.** The terms “Defendant Releasees” and “Downstream Defendant
7 Releasees” shall have the meanings given in Section 5.1.

8 **2.7 Execution Date.** The term “Execution Date” shall mean the date this Consent
9 Judgment is signed by the parties

10 **3. INJUNCTIVE RELIEF: WARNINGS**

11 **3.1** Commencing on the Effective Date, Rite Aid shall not sell, offer for sale, or ship
12 for sale in California any Covered Product, unless the Covered Product is accompanied by the
13 following on-product warning:



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

16
17 Or



WARNING: The use of this product can expose you to carbon monoxide and soot,
21 which are chemicals known to the State of California to cause cancer and birth defects or
22 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

23
24 **3.2** The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
25 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
26 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
27 words, statements, or designs as to render it likely to be read and understood by an ordinary
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1 individual under customary conditions of purchase or use. A warning may be contained in the
2 same section of the packaging or labeling that states other safety warnings, if any, concerning the
3 use of the product and shall be at least the same size as those other safety warnings, but no less
4 than 6 point font.

5 3.3 For warnings that are not on-product warnings, including but not limited to
6 warnings printed in an instruction booklet for any Covered Product, the following warning shall
7 be used:



10 **WARNING:** The use of this product can expose you to carbon monoxide and soot,
11 which are chemicals known to the State of California to cause cancer and birth defects or
12 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

12 **4. MONETARY TERMS**

13 4.1 **Civil Penalty.** Rite Aid shall pay a civil penalty of \$1,000.00 pursuant to Health
14 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
15 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
16 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
17 Wimberley, as provided by California Health & Safety Code § 25249.12(d).

18 4.2 **Attorney's Fees.** Rite Aid agrees to pay reasonable attorney fees, inclusive of all
19 expenses and costs incurred as a result of investigating, bringing this matter to Rite Aid's
20 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
21 interest, pursuant to Code of Civil Procedure section 1021.5, in an amount of \$34,000.00 Rite
22 Aid shall wire Wimberley's counsel the total sum of \$35,000.00 representing the civil penalty and
23 attorney fees in Sections 4.1 and 4.2 within 5 days following receipt of a fully-executed copy of
24 this Consent Judgment, and wire instruction information from Wimberley's counsel.

25 **5. RELEASE OF ALL CLAIMS**

26 5.1 This consent judgment is a full, final, and binding resolution between Wimberley
27 acting in the public interest, and Rite Aid, its owners, investors employees, directors, officers,
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1 managers, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
2 companies, and affiliates, and their successors and assigns (“Defendant Releasees”), and all
3 entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered
4 Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
5 customers, licensors, licensees, retailers, franchisees, and cooperative members, and their
6 successors and assigns (“Downstream Defendant Releasees”). Upon full execution of this
7 Consent Judgment, and subject to payment by Rite Aid of the full settlement amount and
8 compliance with the terms of this Consent Judgment, Wimberley, on behalf of herself, her agents,
9 successors, heirs, and assigns, hereby fully and irrevocably releases and discharges Rite Aid, the
10 Defendant Releasees, and the Downstream Defendant Releasees from all claims for violations of
11 Proposition 65 that were, or which could have been, asserted in the Complaint based on exposure
12 to and/or failure to warn about Listed Chemicals from Covered Products as set forth in the Notice,
13 with respect to any Covered Products manufactured, distributed, or sold by Rite Aid, the
14 Defendant Releasees, and/or the Downstream Defendant Releasees prior to the Effective Date.
15 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
16 with regard to the Covered Products.

17 5.2 In addition to the foregoing, Wimberley, on behalf of herself, her past and current
18 agents, representatives, attorneys, and successors and/or assignees, and not in her representative
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
20 legal action and releases any Rite Aid, Defendant Releasees, and Downstream Defendant
21 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
22 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
23 expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity,
24 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
25 related to or arising from Covered Products manufactured distributed or sold by Rite Aid or
26 Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph,
27 Wimberley hereby specifically waives any and all rights and benefits which she now has, or in the
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1 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil
2 Code, which provides as follows:
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4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
6 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
7 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
8 THE DEBTOR.

9 5.3 Rite Aid waives any and all claims against Wimberley, her attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Wimberley and her attorneys and other representatives, whether in the course
12 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
13 matter, and/or with respect to Covered Products.

14 6. INTEGRATION

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
16 any and all prior negotiations and understandings related hereto shall be deemed to have been
17 merged within it. No representations or terms of agreement other than those contained herein
18 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

19 7. GOVERNING LAW

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
23 Rite Aid shall provide written notice to Wimberley of any asserted change in the law, and shall
24 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
25 that, Covered Products are so affected.

26 8. ENFORCEMENT

27 8.1 Wimberley may, by motion or application for an order to show cause before the
28 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
Judgment. Prior to bringing any motion or application to enforce the requirements of this

1 Consent Judgment, Wimberley shall provide Rite Aid with a proposed Notice of Violation, and a
2 copy of any documentary evidence which purportedly supports Wimberley's Notice of Violation.
3 The Parties shall then meet and confer in good faith for a period of at least sixty (60) days
4 regarding the basis for Wimberley's anticipated motion or application in an attempt to resolve it
5 informally. Should such attempts at informal resolution fail, Wimberley may file her
6 enforcement motion or application. This Consent Judgment may only be enforced by the Parties.

7 **9. NOTICES**

8 9.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
10 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
11 party by the other party at the following addresses:

12
13 For Rite Aid:

14 Elizabeth V. McNulty
15 Taylor Anderson LLP
16 19100 Von Karman Avenue, Suite 820
17 Irvine, CA 92612

18 and

19 For Wimberley:

20 Stephen Ure
21 Law Offices of Stephen Ure, PC.
22 11622 El Camino Real, Suite 100
23 San Diego, California 92130

24 Any party, from time to time, may specify in writing to the other party a change of address to
25 which all notices and other communications shall be sent.
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10. COUNTERPARTS; FACSIMILE SIGNATURES

10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

11.1 Wimberley agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and Rite Aid agrees it shall support approval of such Motion.

11.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within twelve months after it has been fully executed by the Parties. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30-days, any monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed on its normal course.

11.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the trial court, and the case shall proceed on its normal course on the trial court's calendar.

12. MODIFICATION

12.1 This Consent Judgment may be modified only by express written agreement of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

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13. ATTORNEY'S FEES

13.1 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. RETENTION OF JURISDICTION

14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

15. AUTHORIZATION

15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

1 **APPROVED AS TO FORM:**

2	3	4	5	6	7	8	9
	AGREED TO:		AGREED TO:				
	Date: <u>09/05</u> , 2017		Date: <u>09/15/</u> , 2017				
	By: <u>[Signature]</u>		By: <u>[Signature]</u>				
	On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC		On Behalf of Rite Aid, Inc. Elizabeth V. McNulty Taylor Anderson LLP				

10 **IT IS HEREBY SO STIPULATED:**

11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
	AGREED TO:		AGREED TO:															
	Date: <u>September 4, 2017</u>		Date: _____															
	By: <u>[Signature]</u> EVELYN WIMBERLEY		By: _____ Rite Aid, Inc.															

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APPROVED AS TO FORM:

AGREED TO: Date : _____, 2017 By: _____ On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC	AGREED TO: Date: _____, 2017 By: _____ On Behalf of Rite Aid, Inc. <i>Confortis</i> Elizabeth V. McNulty Taylor Anderson LLP
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IT IS HEREBY SO STIPULATED:

AGREED TO:	AGREED TO:
Date: _____	Date: <u>9/13/17</u>
By: _____ EVELYN WIMBERLEY	By: <u><i>[Signature]</i></u> Rite Aid, Inc. <i>Confortis</i>